

of his tack duty, during the space of a year, it should expire, and that without any declarator. Yet the LORDS found it behoved to abide a declarator.

No 60.

*Fol. Dic. v. 1. p. 488. Spottiswood, (REMOVING.) p. 283.*

1564. December 1. EARL of SUTHERLAND against HUGH GORDON.

THE Earl of Sutherland pursues a declarator against Hugh Gordon, his vassal, that his right being holden feu, two terms have run into the third, and thereby the right is extinct, not only by the act of Parliament, but by a particular clause in the defender's infeftment, at least in the disposition whereupon his charter and sasine proceed. There is also called an appriser, who *alleged*, that he being a singular successor, and a stranger to his author's rights, during the legal unexpired, is not obliged to possess, and cannot amit his right by his author's fault, or by his own ignorance.

No 61.

Irritancy of a feu found purgeable at the bar, if the declarator proceeded upon the act 250. parliament 1597; but if upon an agreement between parties, not purgeable.

THE LORDS having considered this case, and reasoning amongst themselves upon the difference of a clause irritant in an infeftment feu, and the benefit of the act of Parliament, they found, that if the pursuer insisted upon the act of Parliament, the defender might purge the failzie, by payment at the bar; but if he insisted upon the clause in the infeftment, it behoved to be considered, whether that clause was in the real right by the charter and sasine, either specially or generally, under the provisions contained in the disposition; or, if it was only in the disposition,

In which case, though it might operate against the vassal, or his heirs, yet not against the appriser, unless the sasine had been immediately upon the disposition; in which case, the disposition serves for a charter.

And therefore ordained the pursuer to condescend, and it is like, that in favours of the appriser, being a stranger, they would suffer him to purge at the bar, *utcumque* in this cause, it was not found necessary to cite all parties at the market-cross, albeit the letters bear so. See PERSONAL and REAL.

*Fol. Dic. v. 1. p. 488. Stair, v. 1. p. 233.*

1665. February 16. HELEN HEPBURN against ADAM NISBET.

HELEN HEPBURN pursues Adam Nisbet to remove from a tenement in Edinburgh, who *alleged absolvitor*, because he had a tack standing for terms to run. It was *replied*, that the tack bore expressly, if two terms run in the third unpaid, the tack should expire and be null, *ipso facto*, without declarator. It was *answered*, that notwithstanding clauses so conceived, the Lords have been accustomed to put them to declarator, in which case, they have the privilege to purge the failzie at the bar, and if need be, the defender will now purge.

No 62.

A tack found null without declarator, in consequence of a conventional irritancy, which was not allowed to be purged.